

APPEAL NO. 052736  
FILED JANUARY 11, 2006

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on September 20, 2005. The hearing officer resolved the disputed issue by deciding that respondent 2 (claimant) is entitled to supplemental income benefits (SIBs) for the 8th quarter. The appellant/cross-respondent (carrier) represents in its appeal of attorney's fees that it did not appeal the underlying 8th quarter SIBs determination. However, the carrier does appeal Texas Workers' Compensation Commission Order for Attorney's Fees, dated November 16, 2004, (Order 1, Sequence No. 45) awarding attorney's fees to respondent 1/cross-appellant (attorney) and conditionally appeals Texas Workers' Compensation Commission Orders for Attorney's Fees both dated November 16, 2004, (Order 2, Sequence No. 42 and Order 3, Sequence No. 43), arguing that the fees requested are unreasonable and unnecessary for one quarter of SIBs. The carrier notes that both Order 2, Sequence No. 42 and Order 3, Sequence No. 43 were ordered by an Texas Department of Insurance, Division of Workers' Compensation (Division) official action officer rather than a hearing officer. The carrier appealed both Order 2, Sequence No. 42, and Order 3, Sequence No. 43 because it was not certain whether the Orders issued by the official action officer are properly contested pursuant to 28 TEX. ADMIN. CODE § 152.3(d) (Rule 152.3(d)) or Rule 152.3(e) under the circumstances. The carrier also simultaneously contested the fees awarded in Order 2, Sequence No. 42 and Order 3, Sequence No. 43 by requesting a CCH. The Division records reflect that a CCH regarding the attorney's fees awarded in Order 2, Sequence No. 42 and Order 3, Sequence No. 43 have been set for a CCH on January 31, 2006. In a separate request for review, the carrier also appeals the attorney's fees awarded in Texas Workers' Compensation Commission Order for Attorney's Fees, dated December 6, 2005, (Order 4, Sequence No. 44) by hearing officer. The appeal file does not contain a response from either the claimant or the attorney to the carrier's appeals. However, the attorney also files an appeal disputing the attorney's fees awarded in Order 4, Sequence No. 44. The appeal file does not contain a response to her appeal from either the claimant or the carrier.

DECISION

Reversed and remanded.

The claimant's attorney represented the claimant with regard to SIBs for the 8th quarter. The hearing officer determined that the claimant was entitled to SIBs for the 8th quarter. The carrier represents in its appeal that this determination was not appealed. Additionally, the Division records indicate that there was no appeal of the SIBs determination for the 8th quarter. The claimant's attorney subsequently submitted attorney's fees related to what appears to be the 8th quarter in four separate applications, resulting in four separate orders for attorney's fees.

Rule 152.3(d) provides that except as provided in subsection (e) of Rule 152.3, an attorney, claimant, or carrier who contests the fee fixed and approved by the Commission shall request a benefit CCH 15 days after receipt of the Commission's order. Rule 152.3(e) provides that an attorney, claimant, or carrier who contests the fee ordered by a hearing officer after a CCH shall request review by the Appeals Panel pursuant to the provisions of Rule 143.3 (relating to requesting the Appeals Panel review of the decision of the hearing officer).

As previously noted, both Order 2, Sequence 42 and Order 3, Sequence 43, were ordered by an official action officer. Therefore, the proper procedure to contest the fees fixed in both Order 2, Sequence 42, and Order 3, Sequence 43, was to request a benefit CCH. The Division records indicate that such a request was made and that a CCH is set for these matters on January 31, 2006. The appeal regarding the reasonableness and necessity of Order 2, Sequence 42 and Order 3, Sequence 43, is not properly before us and will not be considered.

The carrier argues in its appeal that the attorney's fees ordered in Order 1, Sequence No. 45 are not reasonable and necessary. The carrier argues that the rate requested by the claimant's attorney was not reasonable and necessary in this case and that she claimed more time for attendance at the benefit review conference than the carrier's attorney did.

In a separate appeal, the carrier also disputes Order 4, Sequence No. 44, arguing that the fees ordered are not reasonable and necessary. The attorney also appeals the fees ordered. The attorney does not specify the reason for her dispute. However, the order reflects that while the claimant's attorney requested an hourly rate of \$200/hour the hearing officer approved a rate of \$125/hour.

Since this case involves a claimant's attorney's fees in a supplemental income benefits (SIBs) dispute, Section 408.147(c) and Rule 152.1(f) apply. Both of those provisions speak in terms of reasonable and necessary attorney's fees and provide for payment of the attorney's fees by the carrier. Rule 152.4 regarding guidelines for legal services do not apply. Appeals Panel Decision (APD) 970805, decided June 18, 1997. The AFPS does not indicate that the hearing officer entered a log text explaining why the requested rate was not approved.

We review attorney's fees cases under an abuse-of-discretion standard. APD 951196, decided August 28, 1995. The hearing officer provides no reasoned justification for disapproving the disputed rate requested in Order 4, Sequence No. 44. Similarly, no justification text appears from the hearing officer explaining why he approved the rate and time as requested in Order 1, Sequence No. 45. As such, we have no basis upon which to determine whether or not the hearing officer abused his discretion in disapproving the requested rate or in approving all of the time requested. APD 960158, decided March 5, 1996; APD 970423, decided May 15, 1997. Accordingly, we reverse Order 1, Sequence No. 45 and Order 4, Sequence No. 44, and remand for the hearing officer to reconsider the hours and requested fees and

determine whether all or any portion of those fees are reasonable and necessary. The hearing officer should provide a reasoned justification for disallowing any item he disapproves.

We note that a CCH has been set regarding Order 2, Sequence 42, and Order 3, Sequence 43, for January 31, 2006. The carrier points out that in Order No. 42, Sequence No. 2, the claimant's attorney requested fees for services provided for over 20 hours in a single day. In this case, to appropriately determine the necessity and reasonableness of fees provided pertaining to the 8th quarter of SIBs the hearing officer should consider all of the fees applied for pertaining to the 8th quarter. It would be prudent for the hearing officer to consolidate the remand hearing on this appeal with the other appeal for Order 2, Sequence 42 and Order 3, Sequence 43 set for the scheduled January 31, 2006, CCH.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202, as amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code in the computation of time in which a request for appeal or a response must be filed.

The true corporate name of the insurance carrier is **GENERAL INSURANCE COMPANY OF AMERICA** and the name and address of its registered agent for service of process is

**LEON CROCKETT  
1600 NORTH COLLINS BOULEVARD  
RICHARDSON, TEXAS 75080-3591.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Veronica L. Ruberto  
Appeals Judge